

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

IN ADMIRALTY

SWEET CAROLINE MARINE, LTD
a Republic of the Marshall Islands Corporation,

Case No. 23-CV-61754-DMM

Plaintiff,

v.

M/Y SWEET CAROLINE, her engines, machinery,
tackle, apparel, boats, furniture, equipment, rigging,
freights, and all other necessary appurtenances, etc.,
in rem, and AVYC, LLC, a Republic of the Marshall
Islands Corporation, *in personam*.

Defendant(s).

**MOTION FOR ISSUANCE OF ORDER DIRECTING THE CLERK OF COURT
TO ISSUE A WARRANT OF ARREST *IN REM* AND
FOR EMERGENCY CONSIDERATION**

Plaintiff, SWEET CAROLINE MARINE, LTD, (hereinafter “Plaintiff”), by and through its undersigned counsel, and pursuant to Supplemental Rule C(3)(a)(i) for Admiralty or Maritime Claims and Local Admiralty Rule C, hereby files this Motion for Issuance of Order Directing the Clerk of Court to Issue a Warrant of Arrest *In Rem* for the M/Y “SWEET CAROLINE” and for Emergency Consideration (the “Motion”) and states:

1. Plaintiff, SWEET CAROLINE MARINE, LTD has filed a Verified Complaint (D.E. 1) against the M/Y “SWEET CAROLINE”, a 2008 127’ Jamaica Flagged IAG motor yacht, Maritime Mobile Service Identifies number (“MMSI”) 3399552000 (the “Vessel”), and its owner, AVYC, LLC (“AVYC”), that is currently within the Southern District of Florida and located at or near a marina in Broward County, Florida.

2. Plaintiff has a maritime lien against the Vessel as a result of a default under a loan agreement and is seeking to foreclose its lien claim pursuant to federal and general maritime law.

3. Plaintiff has contemporaneously filed with this motion the other motions and documents with the Court, which are needed to effect the arrest of the Vessel.

4. Plaintiffs needs to serve a Warrant of Arrest *in rem* against the Vessel to effect service of process.

5. A proposed Order Directing the Issuance of a Warrant of Arrest *in rem* and proposed Warrant of Arrest *in rem* are attached hereto as Exhibits "A" and "B" respectively.

WHEREFORE, Plaintiff, SWEET CAROLINE MARINE, LTD, requests this Court to issue an Order directing the Clerk of Court to issue a Warrant of Arrest *in rem* that directs the U.S. Marshal to effect the arrest of the Vessel.

MEMORANDUM OF LAW

This Motion should be granted as a matter of right and is brought pursuant to Supp.Fed.R. Civ.P. C (*in rem*) and Local Admiralty Rule C (*in rem*). This is a matter of emergency consideration as Plaintiff is informed that the Vessel is a pleasure yacht that is capable of leaving Florida and the Vessel may leave the jurisdiction forthwith, as well as due to the inherently transitory nature of seagoing Vessels.

This Motion is brought pursuant to Supp.Fed.R.Civ.P. C and Local Admiralty Rule C and should be granted as Plaintiff meets the requirements as established under these Rules.

This action is an admiralty or maritime claim under Fed.R.Civ.P. 9(h) involving claims against property, a seagoing vessel, the M/Y "SWEET CAROLINE", which Plaintiff seeks to be arrested and attached. Plaintiff 's Verified Complaint demonstrates its claim for maritime liens against the Vessel, *in rem*, for the default under a loan agreement. As a maritime lienor, Plaintiff

is entitled to issuance of *in rem* Rule C arrest process against the Vessel. The remedy of Rule C arrest is used in maritime proceedings such as these where a plaintiff's claim is secured by a maritime lien against the Vessel. The emergency nature of this Motion is precipitated by the exigent circumstances set forth below and in the Certification of Exigent Circumstances (D.E. 6) contemporaneously filed with this Motion.

REQUEST FOR EMERGENCY ISSUANCE OF PROCESS

Plaintiff has contemporaneously filed a Certificate of Exigent Circumstances (D.E. 6). The exigent circumstances associated with this Motion are that the Vessel in question is currently found within the District, but it is anticipated the Defendants may hide or remove the Vessel from the District and, quite possibly, the jurisdiction of the United States. Plaintiff has made repeated demands upon the owner/Defendant, AVYC, LLC ("AVYC"), who is well aware of Plaintiff's claims and intentions, and it is highly likely the Vessel will leave the jurisdiction.

As to this Emergency Motion for Issuance of Process, Plaintiff is entitled to issuance of the requested process. Supp.Fed.R.Civ.P. C (Arrest) states:

C.(3)(a)(ii)(A) In other actions [not filed by the United States], the court must review the complaint and any supporting papers. If the conditions for an *in rem* action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel....

Local Admiralty Rule C(2)(a)(for the Southern District)(Arrest) states:

(2)(a) Judicial Review Prior to Issuance. Except as provided in Local Admiralty Rule C(2)(b) [Exigent Circumstances], a judicial officer shall first review the verified complaint, and any other relevant case papers, prior to the Clerk of the Court issuing the warrant of arrest and/or summons in rem. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

As clearly demonstrated by the Verified Complaint, the Plaintiff/movant has *in rem* claims for which it is entitled to proceed against the Vessel. This Motion should be granted as Plaintiff has met the requirements as established by the Court under the rules set forth above.

A Draft Order for the Court's consideration is attached, as is a draft Warrant the Court could issue if desired.

WHEREFORE, Plaintiff, SWEET CAROLINE MARINE, LTD, requests that this Honorable Court consider this Motion on an emergency basis, grant its Motion and the Court direct the Clerk of Court issue a Warrant of Arrest in this matter and grant an expedited hearing if the Court deems it appropriate and necessary, along with such other relief as deem appropriate by this Honorable Court.

Dated: September 13, 2023

Respectfully submitted,

/s/ Nicholas J. Zeher

Nicholas J. Zeher, Esq. (Fla. Bar No. 1003565)

Robert E. Machate, Esq. (Fla. Bar No. 1003050)

ROBERT ALLEN LAW

The Four Seasons Office Tower

1441 Brickell Avenue, Suite 1400

Miami, Florida 33131

Tel.: (305) 372-3300

Fax: (305) 379-7018

Email: nzeher@robertallenlaw.com

rmachate@robertallenlaw.com

litigation@robertallenlaw.com

Counsel for Plaintiff